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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/519,046 | 08/19/2005 | Satoshi Murouchi | AK-481XX | 6619 |
| 207 7590 10/13/2009 WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109 | | | | |
| EXAMINER NELSON, MICHAEL B | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
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| 10/13/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 09/29/09 have been considered but are not persuasive.
2. Applicant argues that the examiner alleged that it was not possible to achieve fracture rates between 0.05 and 0.08. This is not correct. The rejection was not based on "enablement" (i.e. arguing that the product is impossible to make) but was based on "new matter" (arguing that there is not evidence of the limitation in the specification as originally filled). Applicant is advised to review the statutory basis for the rejection, reproduced below:
3. "The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention."
4. It may, and probably is, entirely possible to produce fracture rates between 0.05 and 0.08, but there is not evidence in the specification that the applicant had possession of these values with his invention since the only values listed are clustered around 0.045 and 0.094.
5. Applicant's declaration is found to be persuasive in that it alleges that it would be obvious to one having ordinary skill in the art that the dielectric properties of the values around 0.045 and 0.094 would follow a trend that would also apply to values between 0.05 and 0.08; however, this does not alleviate the underlying issue that applicant cannot provide any evidence to show that fracture rates of 0.05-0.08 were within their possession at the time of the invention.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/MN/
10/08/09